



COMMONWEALTH of VIRGINIA

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Secretary of Natural Resources

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO B&J ENTERPRISES L.C. FOR THE BLACKSBURG COUNTRY CLUB STP VPDES Permit No. VA0027481

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and B&J Enterprises L.C., regarding the Blacksburg Country Club STP, for the purpose of superseding the September 28, 2007 Consent Order between the State Water Control Board and B&J Enterprises L.C. and resolving certain violations of the State Water Control Law, the VPDES Permit Regulation, the applicable VPDES Permit, and the 2007 Consent Order.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "B&J" means B&J Enterprises L.C., a limited liability company authorized to do business in Virginia and its members, affiliates, partners, subsidiaries, and parents. B&J is a "person" within the meaning of Va. Code § 62.1-44.3.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "DMR" means Discharge Monitoring Report.
7. "Facility" or "Plant" means the Blacksburg Country Club STP and collection system located at the Blacksburg Country Club Estates subdivision in Montgomery County, Virginia, which treats and discharges treated sewage and other municipal wastes, and owned by B&J Enterprises L.C.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "O&M" means operations and maintenance.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
11. "Permit" means VPDES Permit No. VA0027481, which was issued under the State Water Control Law and the Regulation to B&J Enterprises L.C. on September 12, 2008 and which expires on September 11, 2013.
12. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
13. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.

14. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
15. "Sewer System" means the wastewater collection system, including pump stations, owned by B&J Enterprises L.C., and used to convey wastewater to the Facility.
16. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
17. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
18. "Va. Code" means the Code of Virginia (1950), as amended.
19. "VAC" means the Virginia Administrative Code.
20. "VPDES" means Virginia Pollutant Discharge Elimination System.
21. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. B&J owns and operates the Plant in Montgomery County, Virginia. The Permit allows B&J to discharge treated sewage and other municipal wastes from the Plant, to the North Fork of the Roanoke River, in strict compliance with the terms and conditions of the Permit.
2. The North Fork of the Roanoke River is located in the Roanoke River Basin. The North Fork of the Roanoke River is listed in DEQ's 303(d) Report as impaired for fecal coliform.
3. In submitting its DMRs, as required by the Permit, B&J has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit, for Biological Oxygen Demand ("BOD"), for the months of December 2007, January 2008, February 2008, and May 2009.
4. In submitting its DMRs, as required by the Permit, B&J has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit, for Total Suspended Solids ("TSS"), for the months of December 2007, January 2008, February 2008, February 2009, and September 2009.
5. In submitting its DMRs, as required by the Permit, B&J has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit, for E. coli, for the months of

December 2007, January 2008, February 2008, March 2008, April 2008, July 2008, August 2008, February 2009, May 2009, June 2009, July 2009, August 2009, September 2009, October 2009, November 2009, January 2010, March 2010, April 2010, May 2010, June 2010, July 2010, and August 2010.

6. In submitting its DMRs, as required by the Permit, B&J has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit, for total residual chlorine, for the months of December 2008 and March 2009.
7. In submitting its DMRs, as required by the Permit, B&J failed to report accurate values for the discharge limitations contained in Part I.A.1 of the Permit, for pH, for the months of February 2008 and September 2009.
8. Department staff have noted that the complete Infiltration and Inflow study of the collection system, required by the Special Order by Consent dated September 28, 2007 to be submitted by B&J on or before December 31, 2007, was not received by the Department until March 31, 2008.
9. Department staff have noted that the 1st year Progress Report for compliance with Ammonia effluent limitations, required by Part I.A.2 of the Permit to be submitted by B&J on or before September 12, 2009, was not received by the Department by the deadline. B&J subsequently submitted the required report.
10. Department staff have noted that a completed application for reissuance of the Permit, required by Part I.A.2 of the Permit to be submitted by B&J on or before March 15, 2008, was not received by the Department until August 1, 2008.
11. In submitting its DMRs, as required by the Permit, B&J has indicated that it reached or exceeded 95% of the design capacity authorized by the Permit, for the monthly average flow influent each month for a three-month period and subsequently did not submit a plan of action to ensure compliance with the terms of the permit. B&J asserts that the September 28, 2007 I&I Plan of Action addresses the 95% flow issue.
12. In submitting its DMRs, as required by the Permit, B&J failed to report accurate values for the discharge limitations contained in Part I.A.1 of the Permit, for E. coli for the months of May 2010 and June 2010. B&J also failed to include a letter of explanation for the August 2010 E. coli violation with its August 2010 DMR.
13. B&J notified the Department that it discharged untreated wastewater from the Plant on February 19, 2008, April 28, 2008, June 18, 2009, November 11, 2009, December 9, 2009, December 13, 2009, and March 11, 2010.
14. The Department issued the following WLs and NOVs to B&J for the above referenced violations: NOV W2008-02-W-001 on February 5, 2008; NOV No. W2008-03-W-002 on March 11, 2008; NOV No. W2008-04-W-0001 on April 7, 2008; WL No. W2008-06-W-1001 on June 3, 2008; WL No. W2008-07-W-1004 on July 2, 2008; NOV No.

W2008-10-W-0001 on October 7, 2008; NOV No. W2009-04-W-0004 on April 9, 2009; NOV No. W2009-05-W-0003 on May 7, 2009; WL No. W2009-07-W-1002 on July 9, 2009; NOV No. W2009-09-W-0002 on September 4, 2009; NOV W2009-10-W-0001 on October 14, 2009; NOV No. W2009-11-W-0002 on November 10, 2009; NOV No. W2009-12-W-0001 to B&J on December 7, 2009; NOV No. W2010-01-W-0002 on January 6, 2010; NOV No. W2010-02-W-0003 on February 10, 2010; NOV No. W2010-03-W-0003 on March 10, 2010; NOV No. W2010-04-W-002 on April 6, 2010; NOV No. W2010-05-W-0003 to B&J on May 6, 2010; NOV No. W2010-06-W-0003 to B&J on June 10, 2010; NOV No. W2010-07-W-0002 to B&J on July 8, 2010; NOV No. W2010-08-W-00 2 to B&J on August 4, 2010; NOV No. W2010-09-W-0001 on September 10, 2010 and NOV No. W2010-10-W-0001 on October 6, 2010.

15. B&J responded to the Warning Letters and Notice of Violation by submitting explanations and performing corrective actions to address the violations.
16. B&J's operating logs indicate that it discharged treated wastewater from the Plant every day from December 1, 2007 through July 31, 2010.
17. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
18. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
19. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
20. Va Code § 62.1-44.31 states that "It shall be unlawful for any owner to fail to comply with any special order adopted by the Board, which has become final under the provisions of this chapter".
21. The Department has issued no permits or certificates to B&J other than VPDES Permit No. VA0027481.
22. The North Fork of the Roanoke River is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
23. Based on the documentation submitted by B&J, the Board concludes that B&J has violated the Permit, Va. Code § 62.1-44.5, and 9 VAC 25-31-50, by discharging treated sewage and municipal wastes from the Plant while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C3 through C7, above.
24. Based on the results of Department staff file reviews and documentation submitted by B&J, the Board concludes that B&J has violated the Special Order by Consent dated September 28, 2007, as described in paragraph C8, above.

25. Based on the results of Department staff file reviews and documentation submitted by B&J, the Board concludes that B&J has violated the Permit, as described in paragraphs C9 through C12, above.
26. Based on the documentation submitted by B&J, the Board concludes that B&J has violated Va. Code § 62.1-44.5, and 9 VAC 25-31-50, by discharging untreated wastewater into the North Fork of the Roanoke River, as described in paragraph C13.
27. In order for B&J to return to compliance, DEQ staff and representatives of B&J have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in § 62.1-44.15, the Board orders B&J, and B&J agrees to:

1. Perform the actions described in Appendices A and B of this Order; and
2. Pay a civil charge of **\$11,583** in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
Within 30 days of the effective date of the Order	\$2,895.75 or balance
Within 120 days of the effective date of the Order	\$2,895.75 or balance
Within 210 days of the effective date of the Order	\$2,895.75 or balance
Within 300 days of the effective date of the Order	\$2,895.75 or balance

3. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late, the Department shall have the right to demand in writing full payment of the entire remaining balance under this order by B&J, and the entire remaining balance of the civil charge shall be immediately due and owing. B&J shall pay the entire remaining balance within 15 days of receipt of the demand letter from the Department. Any acceptance by the Department of a late payment or of a payment of less than the entire remaining balance shall not serve as a waiver of the Department's right to accelerate payment of the balance under this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

B&J shall include its Federal Employer Identification Number (FEIN) 54-1786562 with the civil charge payment **and** shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of B&J for good cause shown by B&J, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, B&J admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. B&J consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. B&J declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by B&J to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or

the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. B&J shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. B&J shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. B&J shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the B&J intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and B&J. Nevertheless, B&J agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. B&J petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to B&J.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve B&J from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by B&J and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of B&J certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind B&J to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of B&J.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order. In addition the parties agree that, by its issuance, this Order cancels and supersedes the 2007 Consent Order referenced above.
15. By its signature below, B&J Enterprises L.C. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2010.

Robert J. Weld, Regional Director
Department of Environmental Quality

B&J Enterprises L.C. voluntarily agrees to the issuance of this Order.

Date: 10/8/10 By: Edsel H. Lester
Edsel H. Lester, Managing Partner
B&J Enterprises L.C.

Commonwealth of Virginia

City/County of Salem

The foregoing document was signed and acknowledged before me this 8th day of
October, 2010, by Edsel H. Lester who is Managing Partner of B&J Enterprises L.C., on
behalf of the corporation.

Vonda L. Ward
Notary Public

243264
Registration No.

My commission expires: 10-31-10

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

B&J shall:

- 1) Develop a financial plan to escrow the necessary funds to complete work at the Plant's Pump Station #1. This financial plan shall be submitted to the Department for review and approval no later than February 1, 2011. After the Department approves the financial plan it shall be incorporated by reference and become an enforceable part of the Order.
- 2) Develop a schedule for completion of the work at Pump Station #1. The work includes raising the wet well elevation for the Pump Station above the 100-year flood elevation. This system improvement was identified by B&J in its March 31, 2008 system inflow and infiltration (I&I) study as necessary to eliminate I&I at the Plant. This schedule shall be submitted to the Department for review and approval no later than February 1, 2011. After the Department approves the schedule it shall be incorporated by reference and become an enforceable part of the Order.
- 3) Confirm the flow meter calibration for the Plant no later than December 31, 2010. B&J will provide the Department documentation that this item has been completed no later than January 10, 2011.
- 4) Develop a plan of action to address continuing E. coli effluent limit violations at the Plant as well as to improve the overall performance of the Plant to ensure consistent compliance with all Permit requirements. The plan of action should contain items to be addressed as well as a schedule to complete the plan. This plan of action shall be submitted to the Department for review and approval no later than February 1, 2011. After the Department approves the plan and schedule they shall be incorporated by reference and become enforceable parts of the Order.
- 5) Achieve compliance with the E. coli effluent limits no later than June 30, 2011.
- 6) Provide additional training to its employed or contracted wastewater works operator by requiring attendance at the following training courses as described in the DEQ Operator Training and Assistance Training Schedule. B&J shall register and ensure attendance by its employed or contracted wastewater works operator at the first available course from the following list:
 - Virginia Tech Short School for Wastewater Operators
 - Basic Lab Skills
 - Activated Sludge Process Control: Parts 1 & 2
 - VPDES Permit Reporting
 - Math for Wastewater Operators
 - Sampling and Testing for Small Plants

B&J must provide documentation that its employed or contracted wastewater works operator has successfully completed all the listed courses no later than June 30, 2012.

7) Ensure regular attendance of its employed or contracted wastewater works operator at the Plant. At minimum, the wastewater works operator shall attend to the operations and maintenance of the Plant 5 days per 7 day week.

8) Submit quarterly progress reports to the Department detailing the status of the financial plan, the schedule of work for Pump Station #1, the plan of action for overall plant performance, and the status of training for its employees. The first quarterly progress report shall be due no later than April 10, 2011 and all future reports shall be submitted no later than the 10th day of July, October, January, and April. B&J shall continue to submit quarterly progress reports until such time that this Order is terminated.

9) Unless otherwise specified in this Order, B&J shall submit all requirements of Appendix A of this Order to:

Jerry Ford, Jr.
VA DEQ - Blue Ridge Regional Office
3019 Peters Creek Road
Roanoke, VA 24019
Phone: (540) 562-6817
e-mail: Jerry.Ford@deq.virginia.gov

APPENDIX B INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

From the effective date of this Order until completion of the corrective action requirements contained in Appendix A, but in no event later than June 30, 2011, B&J shall monitor and limit the discharge from Outfall No. 001 of the Blacksburg Country Club STP in accordance with VPDES Permit Number VA0027481, except as specified below. These interim limits shall retroactively apply, if applicable, as of the first day of the month in which this Order becomes effective.

These requirements shall be construed in light of the Regulation.

Parameter Description	Parameter Limits					Monitoring Requirements	
	Quantity Average	Quantity Maximum	Concentration Minimum	Concentration Average	Concentration Maximum	Sample Frequency	Sample Type
120 eColi				NL		2/M	Grab